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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

PAUL MARTEL, an individual,)	
)	
Plaintiff,)	
)	
VS.)	NO. C 19-02715 WHA
)	
HEARST COMMUNICATIONS, INC., a)	
Delaware corporation, and)	
Does 1 through 50, inclusive,)	
)	
Defendants.)	
_____)	

San Francisco, California
Thursday, August 22, 2019

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

WEISENBERG FIRM, PLLC
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San Francisco, California 94105
BY: BENJAMIN D. WEISENBERG
ATTORNEY AT LAW

For Defendant:

THE HEARST CORPORATION
Office of General Counsel
300 West 57th Street, 40th Floor
New York, New York 10019
BY: NATHANIEL S. BOYER
ATTORNEY AT LAW

REPORTED BY: Ana M. Dub, RDR, CRR, CCRR, CRG, CCG
Official Reporter, CSR No. 7445

Thursday - August 22, 2019

11:05 a.m.

P R O C E E D I N G S

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THE COURT: Paul Martel versus Hearst Communications.

THE CLERK: Calling Civil Action 19-2715, Martel
versus Hearst Communications, Inc.

Counsel, please step forward and state your appearances
for the record.

MR. WEISENBERG: Good morning, Your Honor. Benjamin
Weisenberg of the Weisenberg Firm for plaintiff, Paul Martel.

THE COURT: Okay. Please come up here to the lecturn
so it'll be easier for the court reporter.

Give me your name again.

MR. WEISENBERG: Benjamin Weisenberg of the Weisenberg
Firm, Your Honor.

THE COURT: All right.

MR. BOYER: Good morning, Your Honor. Nathaniel Boyer
of the Hearst Corporation for defendant Hearst Communications,
Inc., the publisher of the *San Francisco Chronicle*.

THE COURT: So what's the essence of this case?

MR. WEISENBERG: Misclassification case, Your Honor.
The issue is a single plaintiff claiming misclassification as
an independent contractor, as opposed to an employee, and
seeking damages that result from that misclassification under
assorted California labor laws.

1 **THE COURT:** And the work that Mr. Martel did was what?

2 **MR. WEISENBERG:** He's a newspaper deliveryman.

3 **THE COURT:** Okay.

4 **MR. WEISENBERG:** He delivers the newspapers to
5 people's homes who read the paper.

6 **THE COURT:** When I was a kid, I had that very job.

7 **MR. WEISENBERG:** Sure.

8 **MR. BOYER:** And you were probably an independent
9 contractor, Your Honor, not an employee.

10 **THE COURT:** In those days, I had no clue what I was.
11 I just rolled -- I picked up the papers at the corner; I
12 snipped the wire; I rolled them all up; I put them in this
13 canvas sack; I got on my bicycle and I delivered them.

14 I was pretty good at throwing them right on the porch as I
15 went at high speed to avoid the dogs that were after me.

16 So that went on for a couple of years, and finally, then I
17 graduated from high school.

18 But is that kind of the way it still works? Or does he
19 have a bicycle? How does he --

20 **MR. WEISENBERG:** It is now a car, Your Honor, as
21 opposed to a bicycle.

22 **THE COURT:** All right.

23 **MR. BOYER:** I have a similar experience playing the
24 video game Paperboy, Your Honor, if you're familiar with that
25 one. It's essentially the same thing.

1 But, no. If I can elaborate a little bit on the issues in
2 this case.

3 **THE COURT:** Yes. Give me a --

4 **MR. BOYER:** I think plaintiff's counsel accurately
5 said that this is, of course, a misclassification case.

6 It's important to note that this case comes amidst a lot
7 of development in California law on misclassifications issues.
8 Your Honor perhaps is familiar with last year's opinion from
9 the California Supreme Court in *Dynamex*.

10 **THE COURT:** Yes.

11 **MR. BOYER:** Right. Yes.

12 **THE COURT:** Three-factor test.

13 **MR. BOYER:** The three-factor test; the ABC test.
14 Exactly.

15 At present, I understand there's a lot of activity in
16 Sacramento on the legislative front as to the extent to which
17 AB5 -- the extent to which that will be codified. There's a
18 bill that was passed in the Assembly or at least has been moved
19 out of the Assembly to the Senate.

20 Bottom line where I'm going with all this is that, you
21 know, the parties have submitted a joint statement which
22 indicates that we certainly think this is a fairly discreet
23 case and can move forward apace with discovery; but I could
24 certainly see, in the coming months, some clarification,
25 whether it be on the legislative front or even from the

1 California Supreme Court, to whom the Ninth Circuit has
2 recently indicated it is going to refer the issue of
3 retroactivity of *Dynamex*.

4 **THE COURT:** I saw that, yes.

5 So, nevertheless, we've got a case.

6 **MR. BOYER:** We do.

7 **THE COURT:** So why don't we just move forward, and if,
8 before I have -- maybe they'll clarify things in such a way
9 that -- how much money is at stake here?

10 **MR. WEISENBERG:** Several hundred thousands of dollars,
11 Your Honor. So we're talking about four hours of overtime
12 every single day; plus all the associated meal and rest breaks;
13 the pay stub violations; the final pay violations.

14 So just so Your Honor knows, the parties participated in a
15 full-day mediation prior to the action being initiated. So we
16 have checked -- and that's something we mentioned in the joint
17 letter that we wanted to just discuss with Your Honor.

18 **THE COURT:** What is your mediation -- do you still
19 want to do private mediation?

20 **MR. WEISENBERG:** Your Honor, based on counsel's
21 conversations, we don't think that mediation at this time would
22 be an effective use of everyone's time, again, given we've just
23 been through that process but, rather, try to use the discovery
24 process to maybe flesh out the likelihood of the success on the
25 claims versus the likelihood of the defenses on the claims and

1 see if mediation at the end of the discovery process would be a
2 more effective use of everyone's time, given that we've already
3 gone through a full day with a private mediator.

4 There were some other issues at stake in that mediation
5 that --

6 **THE COURT:** Well, I've got to refer you to some kind
7 of ADR program. I can't just let it drift. So if you don't
8 want private mediation, I'll refer you to our ADR unit.

9 **MR. WEISENBERG:** It is plaintiff's preference for
10 private mediation, but timing is the only issue, that being at
11 the end of discovery as opposed to now, Your Honor.

12 **THE COURT:** I could give you more time to do -- both
13 of you wanted a reasonably quick schedule, I think.

14 Well, let me give you the schedule; then we'll come back
15 to that point. You ready?

16 **MR. WEISENBERG:** Yes, Your Honor.

17 **THE COURT:** Have you done your initial disclosures?

18 **MR. WEISENBERG:** Yes, Your Honor.

19 **THE COURT:** Well, I am going to show you how
20 reasonable I am. I'm going to give you until August 30 to make
21 sure you've done it right.

22 **MR. WEISENBERG:** Very well.

23 **THE COURT:** Because if you didn't do it right, what
24 will happen?

25 **MR. WEISENBERG:** It'll come back to bite us.

1 **THE COURT:** No. You don't get any damages if you
2 didn't list your damages. You don't get to use a witness whose
3 names and addresses you didn't put in, the contact info.

4 You've got to read the rule. The rule is pretty clear on
5 what you have to say. But lawyers like to cheat on the rules,
6 and they don't put down the info.

7 So I'm giving you till August 30th to do it right.

8 We had a case the other day where the plaintiff got to go
9 to trial but only to seek one dollar in nominal damages because
10 they had neglected to put, in their Rule 26 disclosure, the
11 damages.

12 **MR. WEISENBERG:** Well, Your Honor, in regards to the
13 Rule 26 --

14 **THE COURT:** That means you have to do it.

15 **MR. WEISENBERG:** Yes, Your Honor.

16 **THE COURT:** There's no exceptions.

17 **MR. WEISENBERG:** There's a number -- there's a number
18 of documents that we will need from defendants to accurately
19 calculate the damages. If Your Honor would like us to do an
20 estimate, we certainly can do an estimate; but because it's a
21 piece-rate case, the damages will be extremely complicated; and
22 the only way for us to do it accurately is to obtain the
23 information from the defendants.

24 **THE COURT:** I don't bless that. I'm not going to say
25 "no" to it, but I'm not going to say "yes" to it. And if I

1 determine later you could have put in a number, out, o-u-t,
2 because it's just a gimmick.

3 See, the lawyers like to say, "Proof according to expert
4 at trial."

5 No way. No way. You've got to figure that out now.

6 But if you convince me later that, yes, you, in fact,
7 could not do it, then you've got to do it to the extent you
8 can.

9 You listed a lot of those things. Like overtime, he knows
10 how many hours he worked overtime.

11 All right.

12 **MR. WEISENBERG:** If I may, Your Honor, yes, but to
13 calculate that overtime, it'll be on a piece-rate calculation;
14 so we'll have to know the number of deliveries to calculate the
15 overtime.

16 **THE COURT:** Didn't he keep records?

17 **MR. WEISENBERG:** The records would be in the
18 defendant's possession.

19 **THE COURT:** Well, he should have some records, maybe.
20 At least some way to estimate.

21 Okay. Leave to add any new parties or pleading amendments
22 must be sought by November 21.

23 The private mediator must be selected and on calendar by
24 August 30, and your mediation must be completed by December 20.

25 Now, that December 20 date I'll come back to because I may

1 give you more time on that.

2 Fact discovery cutoff will be March 31.

3 The last date to designate expert testimony, if you have
4 the burden of proof, will be March 31.

5 This, of course, is next year.

6 And then the last date to file a summary judgment motion
7 will be May 7.

8 Final pretrial conference will be July 8th, and a jury
9 trial on July 20, next year.

10 Then that's it. I'll let you try to talk me out of any of
11 that. Any complaints? Any heartburn?

12 **MR. BOYER:** I think we're comfortable with that
13 schedule at this time, Your Honor.

14 **MR. WEISENBERG:** The schedule is fine as well,
15 Your Honor.

16 **THE COURT:** It's pretty close to what you wanted.
17 It's actually longer than what you wanted.

18 **MR. BOYER:** We're certainly not going to object to
19 that.

20 **MR. WEISENBERG:** The only concern that plaintiff has
21 is what we just discussed, but we'll endeavor to do the most
22 accurate possible damages calculation at this time, subject
23 to -- we're going to need a number of records from the
24 defendants to make sure that our damages calculations are
25 accurate.

1 **THE COURT:** Well, again, that sounds good in theory,
2 but it could turn out that you could have done something. So
3 you've got to do the best that's possible with the information
4 that you have. And that, I insist on.

5 So, all right. What date do you want to complete your
6 mediation by?

7 **MR. WEISENBERG:** Your Honor, may we have the close of
8 fact discovery?

9 **MR. BOYER:** You said -- I believe you set the close of
10 fact discovery at March 31st. Is that correct?

11 **THE COURT:** All right. I'll give you till then. I
12 think that's --

13 **MR. BOYER:** I'm inclined to go a little bit -- I think
14 it would -- it might benefit to have a little bit more time.
15 But I hope that by the time we get into, say, at least January,
16 we will have a good sense of what's going on in this case.

17 **THE COURT:** I don't see how you don't even know right
18 now, because the employee knows what he did. I don't get it.

19 But I'm going to give you till March 31.

20 **MR. WEISENBERG:** Thank you, Your Honor.

21 **THE COURT:** All right. Anything else you want on this
22 schedule?

23 **MR. WEISENBERG:** Nothing from the plaintiffs,
24 Your Honor.

25 **MR. BOYER:** Nothing from defendant, Your Honor.

1 **THE COURT:** This is the *Chronicle*? Which newspaper?

2 **MR. WEISENBERG:** Yes, it's the *Chronicle*. There are
3 some other newspapers beyond the *Chronicle* as well that Hearst
4 Communications is part of, but the vast majority of it is
5 the *Chronicle*.

6 **THE COURT:** All right. Well, good luck to both sides.
7 Thank you.

8 **MR. WEISENBERG:** Thank you, Your Honor.

9 **MR. BOYER:** Appreciate it, Your Honor.

10 (Proceedings adjourned at 11:15 a.m.)

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13 **CERTIFICATE OF REPORTER**

14 I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above-entitled matter.

16
17 DATE: Friday, April 3, 2020

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19 _____

20 Ana M. Dub, CSR No. 7445, RDR, CRR, CCRR, CRG, CCG
21 Official Reporter, U.S. District Court
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